IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 329 of 1987

Date of Decision: 25.11.2004

UNITED INDIA INSURANCE CO.LTD.

Versus

JASBHAI KHUSHALBHAI PATEL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

Appearance

1. First Appeal No. 329 of 1987
Ms. Mayaben Desai for MR KF DALAL for Appellant No.
MR YV BRAHMBHATT for Respondent No. 1-6
..... for Respondent No. 7-8

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

This appeal is directed against the award made by

the Motor Accident Claims Tribunal (Auxi.) Kheda at Nadiad in MAC Petition No. 438 of 1982 dated 2.6.1986.

Whether reporters of Local Papers may be allowed to see the Judgment?

2. Shortly stated, Suryakant Jashbhai Patel was returning from his field on 27.8.81 at about 4.30 to 5.00 p.m. When he reached near the Primary School of Sinjiwada on National Highway, a tractor / trolly bearing Registration No. GJU 7973 / GTL 1747 came from behind and knocked him down. As a result, he suffered injuries on the abdomen and lower part of his waist which resulted into paralysis and paraplegia. The allegation is that the accident took place due to rash and negligent driving of the tractor by driver. The deceased was B.Com. Graduate. His monthly income from agricultural operations is stated Rs.1100.00.Due to 100 % permanent disability, he is unable to do agricultural work. Compensation of Rs.2,50,000.00 is claimed under various heads. He was admitted in the Hospital on 27.8.1981.He died on 7.4.1985, substituted by his legal heirs. Opponents denied that he was earning Rs.1100.00 p.m. and received injuries on account of accident, resulted in paralysis of the lower part of the body. Involvement of the tractor is also denied though it is admitted that the tractor is insured with the opponent-Insurance Co. Claim for Rs.2,50,000.00 is stated to be excessive. Further, contributory negligence on the part of the deceased Suryakant J. Patel is alleged. It is also stated that the driver of the tractor was not holding valid licence and the liability is to the extent of Rs.50,000.00 and the death is not the proximate cause of the accident/injuries suffered in the accident and after the death of the deceased, the claim does not survive.

3. On the pleadings of the parties, issues are framed, evidence recorded, parties heard and findings recorded are that the deceased sustained injuries in the accident due to rash and negligent driving of tractor by the driver and that the injuries were the proximate cause of death of the deceased and the claim did not die with the death of the deceased and the driver of the tractor was holding legal and valid licence at the time of accident and the liability of the Insurance Co. was not limited to Rs.50,000.00 alone and the claimants No. 1(1), 1(2) and 1(6) are awarded compensation of Rs.1,48,760.00 carrying interest at the rate of 12% holding the opponents jointly and severally liable, compensation divided as per operative portion of the

award.

4. The appellants are not satisfied with this award, therefore, this appeal challenging the same. Heard the parties. Perused the record.

5. First question for determination is whether the accident took place as alleged. The contention is that the tractor was not involved in the accident. Perusal of the evidence on this aspect clearly establishes that it was this vehicle which caused the accident and the contention to the contrary is thoroughly unsustainable. There is sufficient, satisfactory and dependable evidence to justify this conclusion recorded by the Claims Tribunal. Next contention is that there is no direct connection between the injuries and the death of the deceased. In support of this contention, it is pointed out that the deceased died of pneumonia. This is not so. Pneumonia may be one of the reasons for the death. Evidence of the Doctor states three grounds for death which includes injuries suffered in the accident. Injuries has resulted into paralysis and paraplegia. Doctor states that the injured had compression fracture D/12 spine with complete paraplegia including sensation, urinary inconvenience with loss of muscle control, bowel incontinence. He had abrasion over the fractured side at the back. He remained in hospital for a number of months. Even after discharge, he had to visit the hospital. For giving deposition in the Court, he was bodily lifted and made to sit in the witness box in a chair and one person to hold him. He has paralysis of the lower part of his body and catheter inserted to drain out the urine in a bottle suspended to his waist. He developed bed sore resulting in infection. In substance, these injuries contributed to the death of the deceased. Consequently, contention to the contrary is rejected.

Next, it is contended that the liability of the Insurance Company is limited to Rs.50000.00 alone. This aspect has been discussed by the Claims Tribunal in para 15, page 26, against issue No.5 of the award. It is found that the liability is not confined to Rs.50000.00 against section II-1 (i). Liability pertaining to death of or bodily injury to any person caused by or arising out of the use (including the loading and/or unloading) of the motor vehicle and (ii) is relating to damage to property caused by the use (including the loading and/or unloading) of the motor vehicle. This means, the liability of the Insurance Co. is not limited as contended. Therefore, conclusion is justified. No other contention is urged. Consequently, we find no force in

this appeal and the same is dismissed. Amount of compensation be released as per the directions in the award.

[BHAWANI SINGH]
CHIEF JUSTICE

[H.K.RATHOD]
JUDGE

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